

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-181983

DATE: MAR 25 1976

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MATTER OF: Duane C. Moxon--Real Estate Expenses  
incurred upon relocation

- DIGEST:
1. Employee was transferred to new duty station and reports for duty June 18, 1971. In June 1973 he requests extension of time for claiming house purchase costs stating that litigation delayed his exercising his option to buy the house he was renting. Record indicates employee did not initiate lawsuit but rather contacted attorney who prepared sales contract which was entered into within 2-year period. Litigation did not necessarily delay purchase of residence beyond initial 1-year period, and thus there is no basis for granting extension of time under OMB Circular A-56, 4.1e(1).
  2. Employee enters into "oral rental purchase option" for residence after transfer to new duty station in June 1971. Under OMB Circular A-56, 4.1e(2), contract for purchase must have been executed within initial 1-year period from time employee reported to new duty station before request for extension of time for claiming real estate expenses may be considered. There is no basis for an extension of time since under Florida law agreement to purchase land must be in writing and first evidence of valid contract was document dated after initial 1-year period.

This action is in response to a request for a decision from the Acting Assistant Director, Financial Management, Bureau of Indian Affairs (BIA), Department of the Interior, concerning a voucher submitted by Mr. Duane C. Moxon, a BIA employee, for reimbursement of real estate expenses incurred upon relocation.

The record indicates that Mr. Moxon was transferred from Belcourt, North Dakota, to Hollywood, Florida, and was authorized reimbursement of expenses by a travel authorization dated June 4, 1971. It appears that in June 1971 Mr. Moxon entered into an "oral rental purchase option" with regard to a house located in Broward County, Florida. By memorandum dated June 4, 1973, Mr. Moxon requested from BIA an extension of time for claiming reimbursement of house purchase expenses stating, "Litigation has

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delayed my exercising the option to buy until relatively recently." BIA denied the request for an extension of time on the ground that the giving or taking of an option did not in itself constitute a valid contract of purchase which must have been entered into within the initial 1-year period from the time the employee reported for duty at the new duty station. The administrative report noted that the first evidence of the existence of a contract was a document signed by the buyers (Moxons) and the sellers on April 1, 1973. The date for closing or settlement was June 15, 1973.

The authority for payment or reimbursement by the Government of the relocation expenses of a transferred employee is contained in 5 U.S.C. 5724a (1970). The controlling regulations implementing 5 U.S.C. 5724a (1970) in effect at the time of Mr. Moxon's transfer was the Office of Management and Budget (OMB) Circular No. A-56, revised June 26, 1969, and provided in part as follows:

"Section 4. ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

"4.1 Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government will reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station; purchase (including construction) of one dwelling at his new official station; or the settlement of an unexpired lease involving his residence or a lot on which a house trailer used as his residence was located at the old official station; provided that:

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"e. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than one (initial) year after the date on which the employee reported for duty at the new official station, except that (1) an appropriate extension of time may be authorized or approved by the head of the agency or his designee when settlement is necessarily delayed because of litigation or (2) an additional period of time not in excess of one year may be authorized or approved by the head of the agency or his designee when he determines that circumstances

justifying the exception exist which precluded settlement within the initial one-year period of the sale/purchase contracts or lease termination arrangement entered into in good faith by the employee within the initial one-year period. The circumstances which are determined by the head of the agency or his designee to justify the exception under (2) above shall be set forth in writing."

With regard to subsection (1) of the above-quoted section, we have held that the term "litigation" means a contest in a court of justice for the purpose of enforcing a right; a judicial contest; a judicial controversy; a suit at law. 48 Comp. Gen. 71 (1968); and B-174315, November 15, 1971. Mr. Moxon stated in his memorandum of June 4, 1973, that litigation delayed his exercising his option to buy. However, we have been informally advised that Mr. Moxon never entered into litigation as defined above with respect to residence in question, but rather he contacted an attorney who prepared a sales contract which was entered into within the 2-year limitation. Since litigation as defined above did not necessarily delay the purchase of the residence, an extension of time may not be permitted under subsection (1).

With regard to subsection (2), we have held that under the then existing regulations there must have first existed a contract for the purchase of the property and the contract must have been entered into within the initial 1-year period. B-181044, April 4, 1975, and cases cited therein. We have been informally advised that Mr. Moxon did not enter into a written lease or rental arrangement, and the first evidence of a contract to purchase was the document signed by the buyers and sellers on April 1, 1973, a date which is not within the initial year after the date on which the employee reported for duty (June 18, 1971). We have held that the term "sales/purchase contracts" in the regulation refers to a contract between a seller and a buyer whereby the seller agrees to transfer the property to the buyer and the buyer agrees to pay the purchase price to the seller. B-178820, November 9, 1972. Mr. Moxon had an oral agreement to rent the house with an option to purchase, but under Florida law an oral agreement to purchase land is not an enforceable contract. Florida Statutes 725.01 (1971).

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Therefore, since the record does not indicate the existence of an enforceable contract within the initial 1-year period, an extension of time may not be permitted under subsection (2).

The above-quoted regulation was amended, effective October 28, 1972, so that a valid contract of sale/purchase within the initial 1-year period would no longer be required in order for the employee to be considered for an extension of time. However, this amendment is not retroactively effective, and we have held that it covers only those situations where it is shown that the initial 1-year period after the employee reported for duty at the new official station had not yet expired as of October 28, 1972. B-182564, November 26, 1975; and B-176586, March 12, 1973. To apply the amendment retroactively to situations where the initial 1-year had expired prior to October 28, 1972, would violate the stated effective date of the amendment as well as the long-established rule against retroactive application of regulations in the absence of explicit language therefor.

Finally, Mr. Moxon has based his request upon a decision of this Office, B-181983, January 3, 1975 (54 Comp. Gen. 553 (1975)). In that case we held that a request for an extension of time made after the expiration of the initial 1-year period but before the expiration of the 2-year period is allowed under the Federal Travel Regulations. We fail to see the applicability of this decision to the facts of the case at hand.

Accordingly, the voucher may not be certified for payment.

R.F.KELLER

Deputy

Comptroller General  
of the United States

R. Higgins 3/18/76